



The Insolvency
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DEAR INSOLVENCY PRACTITIONER
Issue 143 – March 2022

Dear Reader

Please find enclosed the latest articles from the Insolvency Service.

In this issue:	
Information/Notes page(s):	
Chapter 10	Disqualification
Article 53	New enquiry process relating to potential abuse of COVID-19 Government financial support schemes

53) New enquiry process relating to potential abuse of COVID-19 Government financial support schemes

Misuse of the various COVID-19 Government financial support schemes, and the Bounce Back Loan scheme in particular, currently make up a high proportion of the misconduct being targeted for investigation. In Dear IP Chapter 29, articles 38 and 48 provide information about how office-holders should report potential abuse of these COVID-19 support schemes and the potential indicators of abuse of these schemes. Those articles provide a helpful reminder of what to report and how this can be done.

This article sets out a new process the Insolvency Service is introducing, and the assistance of office holders is greatly appreciated in implementing that.

Nature of abuse

As at 31st March 2022, the Insolvency Service has not published official statistics on the number of director disqualifications obtained in respect of COVID-19 support scheme abuse. Although the total number of disqualifications obtained is not available yet, it is worth noting that these cases are resulting in mid to high bracket periods of disqualification, and cover a range of misuse of support funds and inaccurate applications.

To illustrate the types of misconduct identified here are some case examples:

Example A – 1 director, 3 companies, 3 BBLs of £50,000 with no evidence of any company trading.

Mr A was the sole director of 3 limited companies. Mr A caused each of the companies to obtain a £50,000 Bounce Back Loan when there is no evidence that any of the companies traded and therefore, they were not eligible for the loans. A 13-year disqualification undertaking was accepted by the Secretary of State. A decision not to pursue a Compensation Order was made as the office-holder is seeking recovery.

Example B – 2 directors, 2 companies, 2 BBLs of £50,000 obtained but records indicate turnover was over-estimated on both applications.

Mr B applied for a £50,000 BBL on behalf of Company A declaring on the application form that the company had a turnover of £200,000. Records indicate that Company A's actual turnover was no more than £7,600 and as such it was not eligible for a BBL of any amount. Furthermore, there was no evidence to support the director's account of the money being used for the economic benefit of the company. An 11-year disqualification undertaking was accepted by the Secretary of State.

Mr C was also a director of Company A and was shown to have either caused or allowed the above misconduct. Furthermore, as sole director of Company B he caused the company to apply for a £50,000 BBL declaring on the application form that Company B had a turnover of £200,000. Company B's accounts for the year ended 31 January 2019 show turnover over £37,350 which would make Company B entitled to a BBL of no more than £9,743. In addition to this, Mr C also failed to provide evidence to demonstrate that the funds were used for the economic benefit of the business. A 10-year disqualification undertaking was accepted by the Secretary of State.

A decision not to pursue a Compensation Order against either director was made as the office-holder has made recoveries against both parties.

New process

The Insolvency Service has identified an opportunity to improve the targeting and investigation of cases where potential misuse of one or more Government backed COVID-19 support schemes is flagged by the office-holder.

In these cases, a standard enquiry letter will be issued to the office-holder as part of the initial review of the case.

The information sought in this letter will enhance case targeting decisions by ensuring the Insolvency Service has the fullest possible summary of the circumstances surrounding the obtaining and disposal of funds through the support scheme(s). This is preferable to opening an investigation simply based on a company having obtained funds from a support scheme, to then establish there is no misconduct associated with that action. The information gathered through these initial enquiries ensures cases can be prioritised and resources can be used effectively.

The standard enquiry letter seeks to establish what support scheme(s) the company accessed, details of the amount received, dates of applications, eligibility for the scheme and evidence of overstatement of turnover.

The enquiries also seek to identify if any support scheme funds were paid to the director(s) or any connected party, what explanations the director has given for how the funds were used, and if the director has since paid money into the company.

Further questions seek to establish if any recovery action is being taken, what level of ongoing trading activity there has been since the support scheme funds were received, and if repayments towards any support scheme funds have been made.

Office-holders will also be asked to provide company bank statements and any bank analysis undertaken.

Through experience gained in investigating these types of cases the Insolvency Service has found that establishing this information is crucial to the success of an investigation. Obtaining it as early on in the process as possible will make the targeting and progressing of investigation cases more efficient. Officer-holder support in providing this information is a valued part of the process. Many of these cases exhibit blatant removal of support funds paid soon after receipt onwards to directors and/or associates. Commonly, office-holders are receiving little explanation for these payments. The Insolvency Service is monitoring how many cases require compensation action should office-holders not make recoveries.

Queries regarding reporting potential misconduct and the standard enquiry letter may be sent to: DCAS@insolvency.gov.uk